

# Exhibit D

December 5, 2018

VIA E-MAIL

Michael Bell  
HHS FOIA Public Liaison  
U.S. Department of Health and Human Services  
Office of the Assistant Secretary for Public Health  
Room 729H  
200 Independence Avenue, S.W.  
Washington, DC 20201

Re: Freedom of Information Act Request, Case No. 2018-00935-FOIA-OS

Dear Mr. Bell:

I am writing regarding Freedom of Information Act (FOIA) request Case No. 2018-00935-FOIA-OS, filed by Lambda Legal (Lambda) on April 27, 2018 and received by the Department of Health and Human Services (HHS) on the same date. Gibson Dunn represents Lambda with regard to this request.

On September 14, 2018, HHS informed Lambda that no responsive records were found with regard to the following request:

“... any records that mention, discuss, reference or relate to HHS’s decision about whether to post, publish or enforce a rule or regulation, whether proposed or final, prohibiting discrimination on the basis of sex, sexual orientation, gender, identity, gender expression, sex stereotypes, or transgender status in any part or aspect of any Medicare or Medicaid program, plan, policy, contract, accreditation process, provider, facility or service.”

Based on media reports regarding HHS’s activities, we believe that responsive documents exist. Lambda is considering whether to administratively appeal this finding; however, in an attempt to resolve this matter informally, we would like further information on the search.

As an initial matter, the September 14 correspondence from HHS states that a representative from the Office for Civil Rights (OCR) conducted a search. How was the OCR selected as the office to search? Did this search cover the entire OCR, including the Office of the Deputy Director for Conscience and Religious Freedom?

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We also would like to know whether searches were conducted for other offices. Because our request relates to rules or regulations prohibiting discrimination in Medicare or Medicaid, we believe responsive documents may be in the Centers for Medicare & Medicaid Services (CMS). Was this office searched as part of this request?

In addition, since our request covers decisions about whether to post, publish or enforce rules or regulations, we think the Office of Intergovernmental and External Affairs (IEA) may have responsive records in its role of intergovernmental policy liaison. Was this office searched?

We further kindly request that you provide us with information about how the search was conducted: using paper records, via an electronic system or database, etc. If an electronic search tool was used, please provide us with the list of search terms.

Finally, HHS's September 14, 2018 correspondence only addressed item 1 of request number 2018-00935-FOIA-OS. Specifically, in 2018-00935-FOIA-OS, Lambda also requested that HHS provide:

"2. Any records that mention, discuss, reference, or relate to HHS's decision about whether to post, publish, or enforce a rule or regulation, whether proposed or final, prohibiting discrimination on the basis of sex, sexual orientation, gender identity, gender expression, sex stereotypes, or transgender status against HHS employees, staff, contractors, or subcontractors, including with regards to access to restrooms or other sex-designated facilities."

"3. Any records that mention, discuss, reference, or relate to HHS's decision regarding whether to publish in the Federal Register, or any other manner, a rule or regulation signed prior to January 20, 2017, but that has since not been published."

"4. Any records that mention, discuss, reference, or relate to any proposed rule or regulation that was signed on January 19, 2017 but that has not been published in the Federal Register."

Are these requests still being processed? If so, which offices will be or have been searched in response to these requests? Specifically, with respect to item 2, has the Office of the Assistant Secretary for Administration been searched?

Thank you very much for your prompt attention to this request.

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Sincerely,

A handwritten signature in black ink, appearing to read "Veronica Till Goodson". The signature is fluid and cursive, with the first name "Veronica" being the most prominent.

Veronica Till Goodson

VTG/vtg

cc Omar Gonzalez-Pagan

Avi Garbow

Minh Nguyen-Dang